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In re Application of	:	DECISION
Hans Martin GUNDNER et al	:	
Application No.: 10/019,491	:	
PCT No.: PCT/SE00/01407	:	ON PETITION
Int. Filing Date: 03 July 2000	:	
Priority Date: 01 July 1999	:	
Attorney's Docket No.: 56087-66481	:	UNDER 37 CFR 1.47(a)
For: APPARATUS AND METHOD FOR ...	:	
FROM THEFT	:	

This decision is in response to petitioner's "RENEWED PETITION UNDER 37 CFR 1.47(a)" filed on 30 December 2002 to accept the above-captioned application without the signature of the non-signing joint inventors- Hans Martin GUNDNER, Andreas LOFFLER and Martin VEIT.

### **BACKGROUND**

In a decision from this Office on 30 December 2002, the petition filed on 22 April 2002 was dismissed. The decision indicated that requirement (2) of 37 CFR 1.47(a) had not been satisfied because petitioner had not provided copies of the signed registered mail return receipt of each of the three non-signing inventors evidencing that the correspondence was received by them.

On 30 December 2002, petitioner filed this renewed petition accompanied, inter alia, with a supplemental declaration of Mr. Johansson.

### **DISCUSSION**

Applicants has satisfied requirements (1)- (4) of 37 CFR 1.47(a) with respect to both Mr. Hans Martin GUNDNER and Mr. Martin VEIT. However, requirement (2) has not been satisfied with respect to non-signing inventor Mr. Andreas LOFFLER.

#### **I. Non-signing inventors refuse to sign**

With respect to non-signing inventors Mr. Hans Martin GUNDNER and Mr. Hans Martin VEIT, the averments of Mr. Johansson are sufficient to support a finding that the non-signing inventors refuse to sign because a copy of the patent application papers including the

Specification, Claims, Drawings, and a Declaration was delivered to their respective address for execution and to this date they have not responded. Mr. Johansson has provided a copy of the registered mail return receipt confirming that both Mr. Hans Martin GUNDNER and Mr. Martin VEIT received the application papers on January 15, 2002. Accordingly, the steps enumerated by Mr. Johansson are sufficient to establish that Mr. Hans Martin GUNDNER and Mr. Martin VEIT refused to sign the declaration.

Petitioner has now satisfied items (1), (2), (3), and (4) under 37 CFR 1.47(a), thus completing the requirements under 37 CFR 1.47(a) for Mr. Hans Martin GUNDNER and Mr. Martin VEIT.

## **II. Non-signing inventor cannot be reached**

Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

### **INVENTOR CANNOT BE REACHED**

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47.

Furthermore, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under 37 CFR 1.47. 37 CFR 1.43 may be available under these circumstances. See MPEP § 409.02. Such a petition under 37 CFR 1.47 will be dismissed as inappropriate.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.

The averments of Mr. Johansson are insufficient to support a finding that the nonsigning inventor, Mr. Loffler could not be found after diligent effort because Mr. Johansson's declaration fails to show diligent effort to locate inventor Mr. Loffler. The declaration only states that a registered letter was sent to his last known addresses, but petitioner has not submitted a copy of the mail return receipt that indicates that the letter was not able to be delivered. It is unclear if it was not able to be delivered because the inventor was away during such time since the record only appears to show one attempt or if the inventor had moved.

In addition, petitioner has not shown that a diligent effort was made to locate Mr. Loffler if he has indeed moved, e.g., has petitioner searched for the above non-signing inventor's new address either by the internet or by telephone directory, which would show diligent effort to find Mr. Loffler.

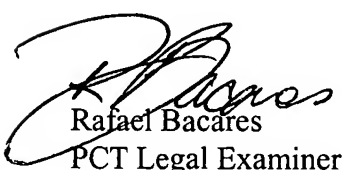
Consequently, the petition does not include sufficient factual proof that Andreas LOFFLER cannot be reached after diligent effort.

### CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Second Renewed Petition Under 37 CFR 1.47(a)." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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